

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

COXCOM, INC.

Plaintiff,

v.

C.A. No. 06-721-GMS

REMBRANDT TECHNOLOGIES, LP

Defendant.

**REMBRANDT TECHNOLOGIES, L.P.'S MOTION TO  
DISMISS PURSUANT TO FEDERAL RULE 12(b)(1)**

Pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure and the Court's discretionary authority under the Declaratory Judgment Act, 28 U.S.C. § 2201, defendant Rembrandt Technologies, L.P. ("Rembrandt"), hereby moves to dismiss plaintiff CoxCom, Inc.'s ("CoxCom") Complaint for a declaratory judgment of non-infringement, invalidity and/or unenforceability of U.S. Patent No. 5,008,903 ("the '903 patent").

For the reasons set forth in more detail in Rembrandt's Opening Brief filed contemporaneously herewith, CoxCom's Complaint does not sufficiently allege an "actual controversy" within the meaning of the Declaratory Judgment Act, 28 U.S.C. §2201. The facts pled in the Complaint do not sufficiently give rise to a reasonable apprehension of suit by Rembrandt against CoxCom on the '903 patent. Therefore, this Court lacks subject matter jurisdiction over the present action and CoxCom's Complaint must be dismissed pursuant to Rule 12(b)(1).

An appropriate form of order is attached.

**WOMBLE CARLYLE SANDRIDGE &  
RICE, PLLC**

/s/ Kevin M. Baird

George Pazuniak (# 478)

Kevin M. Baird (# 4219)

James M. Lennon (# 4570)

AnnaMartina Tyreus (# 4771)

222 Delaware Avenue, Suite 1501

Wilmington, DE 19801

Tel: (302) 252-4324

Fax: (302) 661-7725

kbaird@wcsr.com

*Counsel for Rembrandt Technologies, LP*

Dated: January 26, 2007

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

COXCOM, INC.

Plaintiff,

v.

REMBRANDT TECHNOLOGIES, LP

Defendant.

C.A. No. 06-721-GMS

**ORDER**

At Wilmington, this \_\_\_\_\_ day of \_\_\_\_\_, 2007, having considered the parties' briefing and argument in connection with Defendant's Motion to Dismiss; IT IS HEREBY ORDERED that Defendant Rembrandt Technologies, LP's Motion to Dismiss the Complaint Pursuant to Rule 12(b)(1) is GRANTED.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

**CERTIFICATE OF SERVICE**

I hereby certify that on January 26, 2007, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF and caused the same to be served on the plaintiff at the following address in the manner indicated below:

**VIA HAND DELIVERY AND EMAIL**

Rodger D. Smith II (# 3778)  
Leslie A. Polizoti (# 4299)  
Chase Manhattan Centre  
1201 North Market Street, P.O. Box 1347  
Wilmington, DE 19899-1347  
(302) 658-9200  
rsmith@mnat.com  
lpolizoti@mnat.com

**VIA EMAIL**

Mitchell G. Stockwell  
Kilpatrick Stockton LLP  
1100 Peachtree Street, N.E., Suite 2800  
Atlanta, GA 30309  
(404) 815-6500  
mstockwell@kilpatrickstockton.com

/s/ Kevin M. Baird

Kevin M. Baird (# 4219)